

**Wooster St., LLC v Woolrich Europe Spa**

2021 NY Slip Op 31772(U)

May 25, 2021

Supreme Court, New York County

Docket Number: 656180/2020

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LOUIS L. NOCK**

**PART**

**IAS MOTION 38EFM**

*Justice*

-----X

WOOSTER STREET, LLC,

Plaintiff,

- v -

WOOLRICH EUROPE SPA and WOOLRICH HOLDINGS,  
INC.,

Defendant.

-----X

INDEX NO. 656180/2020

MOTION DATE 11/10/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13

were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

Upon the foregoing documents, the motion of plaintiff Wooster Street, LLC (“Plaintiff”) for summary judgment against defendants Woolrich Europe Spa and Woolrich Holdings, Inc. (“Defendants”) pursuant to CPLR 3213 is granted on default and without opposition, in accord with the following memorandum decision.

**Discussion**

Plaintiff commenced this action for summary judgment in lieu of complaint against Defendants in connection with their guarantees of a commercial lease agreement. Defendants have not opposed the motion or otherwise appeared in the action. In support of its motion, Plaintiff submits the affidavit of William Schur, managing agent of Plaintiff, with exhibits thereto, memorandum of law, and affidavits of service. Schur attests that non-party Woolrich, Inc. (the “Tenant”) entered into a lease agreement (the “Lease”), with Plaintiff for commercial real property located at 115-121 Wooster Street New York, New York (the “Premises”) (Schur aff ¶ 3, exhibit A). Concurrent with execution of the Lease, Defendants executed and delivered

unconditional guarantees (the “Guaranty”) to Plaintiff whereby Defendants guaranteed the Tenant’s financial obligations under the terms of the Lease, including, *inter alia*, Fixed Rent, Additional Rent, damages, costs, and attorneys’ fees and expenses arising from the Tenant’s default under the Lease (*id.* ¶ 4, exhibits 6-7). In April 2020, the Tenant defaulted on the Lease by failing to pay amounts due pursuant to the Lease, and thereafter failing to pay additional amounts owed under the Lease (Schur aff ¶ 5).

Plaintiff now moves for summary judgment in lieu of complaint to enforce the terms of the Guaranty and recover the amounts owed by the Tenant pursuant to the terms of the Lease. Affidavits of service filed by Plaintiff establishes *prima facie* that Defendants were timely served with the motion pursuant to CPLR 308 (2) (NYSCEF Docs 12-13). CPLR 3213 provides that “[w]hen an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint” (*see Cooperatieve Centrale Raiffeisen-Boerenleenbank. B.A., “Rabobank Intl.,” N.Y. Branch v Navarro*, 25 NY3d 485, 491-492 [2015]). “The purpose of CPLR 3213 is ‘to provide quick relief on documentary claims so presumptively meritorious that a formal complaint is superfluous, and even the delay incident upon waiting for an answer and then moving for summary judgment is needless’” (*SpringPrince, LLC v Elie Tahari, Ltd.*, 173 AD3d 544, 545 [1st Dept 2019], quoting *Weissman v Sinorm Deli*, 88 NY2d 437, 443 [1996]). An unconditional guaranty of the payment of rent, additional rent, and other charges pursuant to a lease agreement is an instrument for the payment of money only within the meaning of CPLR 3213 (*Rabobank Intl.*, 25 N.Y.3d at 492; *Jones v Madison Plaza Commercial Owners, LLC*, 173 AD3d 599, 600 [1st Dept 2019]).

“On a motion for summary judgment to enforce an unconditional guaranty, the creditor must prove the existence of the guaranty, the underlying debt and the guarantor’s failure to perform under the guaranty” (*Davimos v Halle*, 35 AD3d 270, 272 [1st Dept 2006]; *accord Rabobank Intl.*, 25 NY3d at 492; *Verela v Citrus Lake Dev., Inc.*, 53 AD3d 574, 575 [2d Dept 2008]). Thus, submission of an unconditional guaranty along with an affidavit of nonpayment is sufficient for a judgment under CPLR 3212 (*European Am. Bank & Trust Co.*, 108 AD2d at 684). Thereafter, “the burden shifts to the defendant to establish, by admissible evidence, ‘the existence of a triable issue with respect to a bona fide defense’” (*Cutter Bayview Cleaners, Inc. v Spotless Shirts, Inc.*, 57 AD3d 708, 710 [2d Dept 2008] [citation omitted]). Plaintiff has met that burden and demonstrated its entitlement to summary judgment in lieu of complaint by submission of the Padgett affidavit and exhibits attached thereto. By failing to appear and contest the allegations asserted by Plaintiff, Defendants are deemed to have admitted all factual allegations contained therein and all reasonable inferences that flow from them (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Therefore, the motion for summary judgment in lieu of complaint is granted.

Accordingly, it is

ORDERED that the motion for summary judgment in lieu of complaint is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff Wooster Street, LLC and against defendants Woolrich Europe Spa and Woolrich Holdings, Inc., jointly and severally, in the sum of \$686,179.18, with interest at the statutory rate from August 1, 2020, as calculated by the Clerk, in addition to reasonable attorneys’ fees in the amount of \$3,586.35, together with costs and disbursements as taxed by the Clerk upon submission of an

appropriate bill of costs, representing damages incurred through November 10, 2020; and it is further

ORDERED that the amount of liquidated damages, including rent, additional rent, reasonable attorneys' fees and other costs that accrued during the pendency of this action and reasonable attorneys' fees is severed and shall be determined by a Judicial Hearing Officer ("JHO") or Special Referee, who shall be designated for such purpose; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/suptctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above.

This constitutes the Decision and Order of the court.

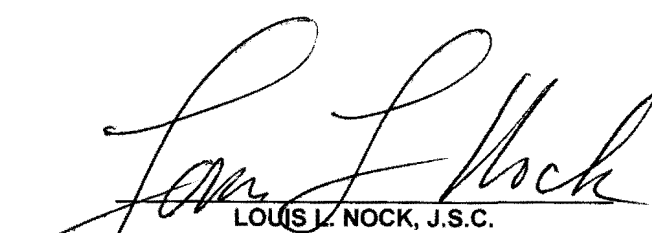
5/25/2021  
DATE

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE

  
LOUIS J. NOCK, J.S.C.